IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4417 OF 2004.
IN
CRIMINAL APPEAL NO.1215 OF 2004.

Kanailal Narayanchandra Dey. ..Applicant.

Versus.

1.The State of Maharashtra.
2.Jeevanchandra Rakshit. ..Respondents.

Mr.A.P.Mundargi i/b Indrajeet Joshi, the counsel for the applicant.

Smt.V.R.Bhosale, APP for the State.

CORAM: S.B.MHASE &
ANOOP V. MOHTA, JJ.

DATE : DECEMBER 16, 2004.

P.C.:

1. Heard Mr.Mundargi, the learned counsel appearing for the applicant and Smt. V.R.Bhosale, the learned APP for the State.

2. Marriage of the deceased with accused had taken place on 13/1/1997 in village Halisahar in West Bengal. This accused is in service at Bombay and after getting accommodation, deceased came to Bombay in December, 1997. The incidence had taken place on 23rd January, 1998 i.e. within few days after her

coming to Bombay. She suffered burn injuries upto 30% and have ultimately after 4 days succumbed to death. Her dying declaration is on record. From the dying declaration it revealed that on the day of incidence, the deceased wife wanted to go to see Femina Contest. However, as the applicant accused was to join duty, he could not accompany her. However, as suggested by the present accused, the deceased had gone to see this contest alongwith the neighbour Mrs. Darekar. When she returned from the said contest, the accused was in house. He was preparing non-vegetarian food. Deceased wife was not feeling well. However, he insisted that she should eat food alongwith the accused. Whereupon she told that she does not want to eat and went to bed. Accused also told her that if she would not eat the food, he also would not eat. Then he consumed liquor. The deceased came out of the room and stated that I was fed up of this life and poured kerosene on her. It is alleged by the prosecution that at this stage accused had thrown burning match stick on the deceased and set her on fire. It is equally revealed from the evidence of the uncle of the deceased that the deceased did not like that accused consumes liquor and therefore, she communicated this fact to her parents. However,

father was not in a position to visit her and therefore, her uncle came to see her and requested the accused not to consume liquor, otherwise he will take deceased to her matrimonial house. Upon which the accused had threatened that if they will take his wife to matrimonial house, the accused will commit suicide and therefore, uncle had no alternative but to return back.

3. With the fact referred above, the incidence had taken place. The learned counsel for the applicant/accused submits that the wife herself poured kerosene and set herself on fire and it is not the accused who had set her on fire. On the contrary, the accused tried to extinguish the fire and received injuries upto 15 to 16%. It is submitted that dying declaration cannot be relied upon because the deceased was not knowing Hindi, Marathi or English language. She was knowing only Bengali and the dying declaration was recorded through an interpreter Mr. Tony Robert D'Souza. However, Mr. D'Souza was not examined in the Trial Court. All these circumstances persuade us to suspend the sentence and grant bail. Apart from this fact, the applicant/accused was on bail during the trial.

4. Hence we pass following order.

ORDER

(i) The sentence passed in Sessions Case No.530 of 1998 by the Sessions Judge, Greater Bombay by Judgment dated 28/7/2004 is hereby suspended till the final disposal of the appeal.

(ii) The applicant/accused be released on bail of Rs.20,000/- with two sureties in like amount.

(iii) In case of his transfer, he will report his address and place of transfer to the police station where crime is registered and equally to this Court where the appeal is pending.

5. The Criminal application is accordingly disposed of.

(ANOOP V. MOHTA,J.) **(S.B.MHASE,J.)**

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